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RUEHDK/AMEMBASSY DAKAR PRIORITY 0138
RUEHNJ/AMEMBASSY NDJAMENA PRIORITY 0008
RUEHPF/AMEMBASSY PHNOM PENH PRIORITY 0019
RUEHSB/AMEMBASSY HARARE PRIORITY 0021
RUEHDR/AMEMBASSY DAR ES SALAAM PRIORITY 0126
RUEHNR/AMEMBASSY NAIROBI PRIORITY 0098
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RUEHLA/AMCONSUL BARCELONA PRIORITY 3437

C O N F I D E N T I A L SECTION 01 OF 05 MADRID 000571

SIPDIS
SENSITIVE

S/WCI FOR MATTHEW LAVINE
AF/C FOR FOX, CASEY
L/LEI FOR BUCHHOLZ, PROPP, JOHNSON
L-EUR FOR PETER OLSON, KAREN JOHNSON
L-AN FOR ONA HAHN
KIGALI FOR KAMINSKI
THE HAGUE FOR SCHILDE
PARIS FOR KANEDA

E.O. 12958: DECL: 05/23/2018

TAGS: PREL PHUM MASS KLIG KAWC OFDP RW SP

SUBJECT: S/WCI AMB. WILLIAMSON PRESSES SPAIN ON RWANDA

REF: MADRID 504 AND PREVIOUS

MADRID 00000571 001.2 OF 005

Classified By: DCM Hugo Llorens for reasons 1.4 (b) and (d)

11. (C) SUMMARY: In consultations with Spanish interlocutors in Madrid May 19-20, Ambassador Williamson (S/WCI) urged the Spanish government to reach out to the Rwandan government at the political level to try to ease tensions over the Spanish judiciary's indictment of 40 Rwandan officials in connection with the deaths of nine Spanish citizens between 1994 and 2000 (reftel). The general Spanish response was positive but noncommittal, although several contacts acknowledged that the overreach of the indictment was inappropriate and potentially problematic for Spain. There was agreement in principle to talking with the Rwandans, although we believe the Spanish will require strong encouragement. A possible scenario for a meeting could be between the Spanish PermRep in New York and Rwandan Prosecutor General Martin Ngoga, when Ngoga represents Rwanda at the UNSC session on the ICTR on June 4. Amb. Williamson also asked the GOS to consider future contributions to several international judicial bodies that may be coming online in Africa in the medium term. The GOS expressed interest in possible participation in the Democratic Republic of Congo and in Senegal. END SUMMARY.

12. (U) Ambassador-at-Large for War Crimes Issues Clint Williamson consulted May 19-20 with Spanish international judicial experts and MFA contacts, opening a dialogue with Spain on an issue in which it has not been particularly active heretofore. Amb. Williamson met with MFA Legal Advisor Concepcion Escobar, Deputy Director General for Africa Antonio Sanchez-Benedito, Deputy Director General for the Balkans Ramon Abaroa, Special Ambassador for Human Rights Silvia Escobar, MOJ Director General for International Judicial Cooperation Aurora Mejia, and Director of International Relations for the General Council of the Judiciary Francisco de Jorge.

//RWANDA INDICTMENTS//

¶3. (C) Amb. Williamson urged the GOS to actively engage the Rwandan government on the issue of the indictments, noting the GOR's concern that the indictments, and more specifically the historical background contained therein, enjoy the full support of the Spanish government. Deputy DG for Africa Sanchez-Benedito told Williamson May 19 that the family and associates of the nine Spanish victims had convinced the Spanish judge to take on the case and that all of the testimony and evidence gathered pointed to forces within the RPF as responsible. He said the judge therefore decided to expand the prosecution to include nearly the entire Rwandan military and senior government apparatus with the exception of Kagame, noting that he was exempted solely because of his immunity as head of state. Sanchez-Benedito acknowledged that such overreach by the Spanish judiciary did impact Spanish foreign relations, also naming an ongoing investigation into the persecution of Falun Gong in China as a case of concern. Sanchez-Benedito said that the GOS does not share the assumptions of the indictment, which seem to rewrite the genocide from an exclusive perspective of Hutu victimhood and Tutsi brutality while ignoring the premeditated Hutu slaughter of Tutsis in 1994.

¶4. (C) Sanchez-Benedito said that Foreign Minister Moratinos had spoken some time ago with the previous Rwandan Foreign Minister, but no one had talked with FM Museminali. Williamson urged that Moratinos call Museminali to explain the Spanish government's position as distinct from its judiciary. He noted difficult conversations with GOR officials during his recent travel to Rwanda, along with concerns by British and German diplomats that the indictments

MADRID 00000571 002.2 OF 005

made travel by Rwandan officials to Europe extremely difficult. Williamson stressed that it is important for the Spanish to engage the Rwandans at senior political levels, not just to rely on technical working-level discussions between their respective police officials. Sanchez-Benedito expressed his understanding but responded that if the Rwandan judiciary had investigated these deaths, the Spanish court would have had no jurisdiction, due to the principle of subsidiarity. (NOTE: Williamson later heard the same argument from Director General for the Mideast, Mediterranean and Maghreb Alvaro Iranzo during a brief conversation May 20. END NOTE.) Sanchez-Benedito said the GOS would make contact with the GOR to explain the situation, but he cautioned that the government has very little room to maneuver, given the separation of powers and the inflammatory issue of the Spaniards' deaths. Williamson noted that the USG is hoping to increase capacity in the Rwandan judiciary, and he suggested that the GOS might take an active interest in this process once the current tensions subside as a way of balancing out the damage done by the indictments.

¶5. (C) MFA Legal Advisor Concepcion Escobar said that she was not so much concerned about jurisdictional issues in the case but on the wildly inaccurate description of circumstances surrounding the deaths. She said that the MFA, and to her knowledge, other ministries had not undertaken any steps to seek international arrests, but she added her understanding that ICTR officials had looked at the cases to see if prosecutions could be undertaken in Arusha. Nevertheless, she pled ignorance on how aggressive the judiciary would be in pursuing the indictments.

¶6. (C) Director of International Relations for the General Council of the Judiciary Francisco de Jorge at first claimed he was only vaguely familiar with the Rwanda indictment case, but his memory quickly returned as the discussion progressed in a meeting on May 20. He offered to explain the case to Rwandan officials on behalf of the judiciary, saying that it would be inappropriate to have any direct contact with Judge Andreu, but that he could in his capacity explain the

indictments and details about the Spanish process to interested parties. He said that he would first have to secure the blessing of the General Council, but believed they would be receptive as long as they received a formal request from the MFA along with reimbursements for travel.

¶7. (C) Amb. Williamson and Charge Llorens agreed May 20 to explore the possibility of setting up a meeting between the Spanish PermRep and Prosecutor General Ngoga in New York on the margins of the UNSC session in early June to discuss the issue, although neither government appears willing to take the lead in setting such a meeting. Amb. Williamson also asked Post to contact British and German colleagues in Madrid to see whether expressions of concern by a broader audience might motivate the GOS to action.

¶8. (C) COMMENT: While the Spanish Government recognizes that this issue is creating tension in a broader arena, they do not seem to feel directly impacted by it and, thus, are not seized with a sense of urgency to resolve it. They were generally receptive to the idea that enhanced dialogue with the Rwandans might be beneficial, but having the point reinforced by other EU governments (e.g., UK, Germany) might prompt them to act more expeditiously. END COMMENT.

//SENEGAL TRIBUNAL OF HISSENE HABRE//

¶9. (SBU) Spanish interlocutors expressed interest in potentially providing support for the proposed trial of Chadian dictator Hissene Habre in Senegal and requested more details on specific needs. All officials acknowledged

MADRID 00000571 003.2 OF 005

Senegal as a country of priority for Spain and agreed with Ambassador Williamson on the importance of the African Union's support for such a trial. Concepcion Escobar agreed to propose greater Spanish judicial cooperation on Senegal and in other areas with Deputy Foreign Minister Lossada. MOJ Director General for Int'l Judicial Cooperation Aurora Mejia expressed strong interest in this idea and said that her office would be the appropriate point of contact for requesting secondees legal officers and experts.

//SIERRA LEONE//

¶10. (SBU) Concepcion Escobar and Sanchez-Benedito confirmed that Spain would maintain roughly the same financial contribution to the Sierra Leone Court in 2008 (approximately 265,000 euros) and that the funds could be released as early as late June. The Spanish will also consider requests for legal officers and judicial personnel, but cautioned that Sierra Leone is not a priority country for Spain. Spain will not accept transferees for execution of sentences. Escobar offered that Spain might investigate providing technical assistance similar to UK programs, but she cautioned that the Spanish development budget was very inflexible and did not include Sierra Leone at this time. Ambassador Williamson expressed U.S. concern over the slow pace of progress by the court, but reiterated the importance of its success for West Africa and for the international judicial process writ large. He noted that the court needs secondees as well, if Spain were in a position to provide those.

//GENOCIDE PREVENTION AND EARLY WARNING//

¶11. (SBU) Concepcion Escobar and Special Ambassador for Human Rights Silvia Escobar expressed Spain's interest in additional information on the Justice Rapid Response and Global Futures Forum initiatives, as well as Spain's willingness to participate in future meetings.

//ICTR AND ICTY CLOSURE//

¶12. (SBU) Ambassador Williamson conveyed that the United States is beginning to look seriously at the processes by which both the ICTR and ICTY can conclude their cases and be

dismantled. For the ICTR, a main obstacle is the incapacity of the Rwandan judicial system to effectively absorb the caseload, while there is a more general reluctance in both tribunals to speed work to a close. He described the ongoing process with the UNSC working group on tribunals but noted that other governments and NGO's have been offering input. He encouraged Spain to support and participate in this effort. Concepcion Escobar took this on board. Deputy DG for the Balkans Ramon Abaroa acknowledged that Serbia is not cooperating at all with the ICTY and knows perfectly well where Mladic is. With the apparent inability of Tadic's party to form a government, future cooperation from Serbia seemed unlikely.

//BOSNIA//

¶13. (SBU) Amb. Williamson discussed the need to prolong the presence of international jurists at the Bosnia State Court past the statutory limit of 2009 and informed Spanish contacts of the need to begin work immediately on changing the Bosnian law. He further noted that the United States would hope to enjoy strong cooperation with Spain once Spain took the EU lead on judicial issues in Bosnia upon the departure of the High Representative. Deputy DG for the Balkans Abaroa noted that not only would Spain be in charge of judicial affairs but also of the overall archives, which would be an important challenge for the Spanish. Concepcion Escobar noted that in addition to judicial cooperation, the

MADRID 00000571 004.2 OF 005

Spanish were concerned with the institutionalization and stabilization of judicial authority in Bosnia.

//INTERNATIONAL CRIMINAL COURT//

¶14. (C) Concepcion Escobar asked Amb. Williamson whether the USG was not perhaps more accommodating in its recent approach to the ICC. She said that the United States appeared to support ICC involvement in prosecuting war crimes in Darfur, and she noted that Spain would be leading the upcoming review conference of the Rome Statute of the ICC, asking if the United States might consider participation in the conference.

Amb. Williamson said that U.S. participation might indeed be counterproductive given our lack of involvement up to this point, and might even prompt other participants to reflexively oppose U.S.-supported provisions that they might otherwise approve. Escobar acknowledged that the "Crime of Aggression" debate would certainly be part of the conference, but that it would not be the only issue raised and European members certainly understand the U.S. position. Spain hoped the conference could be a lessons learned exercise and expressed certainty that the U.S. perspective would be useful in such a context. Regardless of whether the United States becomes a State party, she said it is clear that the United States is not obstructing the work of the ICC, and she said that statements by senior U.S. officials make clear that the ICC can be another jurisdiction for international war crimes, though not the only U.S. option.

¶15. (C) Amb. Williamson noted that the United States and the ICC share the same basic approach toward war crimes issues, and that our preference, when feasible, would be a domestic prosecution of war crimes. If that proves impossible, because of lack of capacity or because of ethnic or political bias, the second option should be some sort of hybrid domestic tribunal with international assistance. The third and last option should be a full-blown international tribunal. Beyond the obvious reasons of delivering justice close to where the crimes occurred and where victims and witnesses are located, a practical reality is that in its current capacity the ICC is not capable of absorbing a large number of new cases, certainly not as many as are currently active or contemplated in other tribunals. Williamson said that while the United States still has significant differences with the ICC, we recognize that it has an important role in the sphere of international justice and

that there will be appropriate circumstances for it to handle certain cases. Escobar agreed but noted that Spain still believe the ICC should be the "jurisdiction of reference" in these issues, while not excluding the need for other tribunals where appropriate.

¶16. (C) Escobar asked Williamson whether the United States might be interested in creating a permanent informal U.S.-EU dialogue on ICC issues on the margins of COJUR to discuss a variety of procedural and technical considerations of mutual interest. Amb. Williamson acknowledged the potential utility of such a venue and took the idea on board, agreeing to consult others in the USG before responding definitively.

//DEMOCRATIC REPUBLIC OF CONGO//

¶17. (SBU) Amb. Williamson detailed the "war crimes mapping mission" being launched by the UN Office of the High Commissioner for Human Rights and asked Spanish contacts to consider involvement in the effort. He noted that plans for the mission are still evolving but that the project will focus on what atrocities occurred where and when, not on identification of specific individual perpetrators. The next step, upon completion of the mapping, as currently envisaged, would be formulation of recommendations to ensure a viable

MADRID 00000571 005.2 OF 005

accountability process. Antonio Sanchez-Benedito and Francisco de Jorge asked for additional information when available and expressed Spain's increased commitment to development assistance for the DRC.

//SOMALIA//

¶18. (C) Sanchez-Benedito expressed Spain's strong support for UNSC action on piracy off the Horn of Africa and said that the EU tide has turned toward the need for a more active approach to this subject. He further assured Amb. Williamson that the TSG, which he said was helpful in the resolution of the seizure of a Spanish fishing vessel by Somali pirates, was very supportive of the proposal and had even written a statement of support to the UNSC.

//GENERAL COUNCIL OF THE JUDICIARY//

¶19. (SBU) Francisco de Jorge, head of International Relations at the General Council of the Spanish Judiciary (CGPJ), said that the Council is willing to provide secondees and experts for the various tribunals in Africa and elsewhere so long as participation enjoys the blessing of the government. He said that the judiciary generally tries not to act internationally out of line with GOS policy where possible. He further cautioned that sending a Spanish judge to work in Congo required certain financial incentives to make such a hardship attractive. As such, he suggested that any requests for Spain to provide international assistance of a judicial nature be made both through the MFA and MOJ and concurrently with the CGPJ.

//COMMENT//

¶20. (C) The undercurrent throughout the visit was acknowledgment of Spain's increasing interest in Africa and concurrent responsibility to act on these issues. Sanchez-Benedito said that Spanish assistance to Africa will top one billion euros next year. Spanish interlocutors were most interested in Senegal and the DRC as potential avenues for further cooperation. Other useful points of contact for additional discussions on these issues include Special Ambassador for Humanitarian Affairs Maria Bassols and Special Ambassador for Peacekeeping Operations Arturo Spiegelberg and Special Ambassador for Humanitarian Affairs Maria Bassols.
END COMMENT.

¶21. (U) Ambassador Williamson has cleared this cable.
Aguirre